THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 920 Of 2001
Old FAFO No. 602 of 1988

M/s United India Insurance Company Limited,
Post Box No. 11, Tikonia, Haldwani, District Nainital.
… **Appellant**

Versus

1. Smt. Motima Devi W/O Harish Chandra Singh,
   Resident of Gairkhet, P.O. Harsil, District Almora.
   (Claimant)
2. Prem Singh S/O Krishna Singh, R/O village Karalagaon,
   P.O. Okhali Seriod, District Almora.

… **Respondents.**

Sri D.S.Patni, Advocate, learned counsel for the appellant.
Sri Rajendra Singh, Adv., learned counsel for the claimant-respondent.

Date: June 23, 2006.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 ***(in short the Old Act)*** against the judgment and Award, dated 23-2-1988, passed in M.A.C. Petition No. 12 of 1986, Smt Motima Devi Vs. Prem Singh and another, by the Motor Accident Claims Tribunal/District Judge Nainital **(*for short the Tribunal*)**, whereby the Tribunal awarded compensation of Rs.48,000/- along with interest @ 10% per annum against the Insurance Company-O.P.No.2, as mentioned in the impugned order. Aggrieved, the Insurance Company-appellant has come up in appeal.

Relevant facts necessary for a just decision of the appeal are that Kedar Singh lost his life in a vehicular accident which occurred on 18-8-1985 involving Truck No. URB-5970, which was being driven rashly and negligently by its driver. The claimant, who is widow of the deceased Kedar Singh, has claimed compensation of Rs. 1,00,000/- for the death of her husband. The truck was insured with M/s United India Insurance Company and the deceased was a workman under the employment of owner of the vehicle Prem Singh.

The opposite parties, owner and insurer of the vehicle, contested the claim petition. The owner has admitted the pleas while the insurer challenged the allegations made in the petition mainly on the ground that the owner of the vehicle was driving the vehicle without having a valid driving licence and the owner had allowed more persons to occupy the truck than its prescribed limit, therefore, there was violation of policy conditions and the insurer is not at all liable to pay compensation.

On the pleadings of the parties, the learned Tribunal framed necessary issues, recorded the evidence led by the parties heard them and after perusing the evidence, it was held that Kedar Singh met with accidental death as alleged by the claimant. It was also held that the accident in question took place due to negligence on the part of the truck driver. The Tribunal then took up Issue Nos. 3 and 4 which were framed on the plea of the insurer and it was held that the vehicle was driven by the driver Dhan Singh and not by the owner Prem Singh. It was also held that the Insurance Company has not led any evidence to establish that there was violation of policy condition, therefore, both the issues were decided against the Insurance Company. Ultimately, the claim petition was decreed for a sum of Rs. 48,000/- along with interest @ 10% per annum from the date of filing of claim petition. It was ordered that the payment made under Section 92-A of the Act shall be deducted from the final compensation.

The impugned award has been assailed mainly on the ground that the ill-fated truck was being driven by Prem Singh and not by the driver Dhan Singh and that the claimant had colluded with the insured.

I have heard the submissions of the learned counsel for the Insurance Company and perused the record.

The factum of accident is proved in the present case. The stand of the insurance company is that the truck was driven by the owner Prem Singh and not by Dhan Singh. The Tribunal framed two issues in the case on the pleas raised by the insurer, which are Issue Nos. 3 and 4. The record reveals that the claimant has produced an independent witness P.W.2 Devendra Singh, who had given ocular account of the accident. He has clearly deposed that he knew Dhan Singh driver from before the accident and he was driving the truck at the relevant time. This part of his statement had remained unshaken and uncontroverted in cross-examination, therefore, on the face of ocular testimony of P.W.2, there is no reason to cast a doubt that the vehicle was being driven by the owner. The Insurance Company has not led reliable evidence to substantiate its stand, therefore, when the insurer has failed to discharge its burden, the finding of the Tribunal does not call for interference. I am fortified in my view by the Apex Court verdict in the case of ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co.Ltd. and others" [(2004) 3 Supreme Court Cases, 386]*** wherein it has been held that *"Motor Accident- Insurance company neither pleading nor leading evidence that the offending driver had no licence- Claims Tribunal awarding compensation- Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."*

The Insurance Company has hammered the finding of the learned Tribunal on the ground that there was collusion between the claimant and the insured in the present case. I have perused the entire material on record. In the present case, the insured and the insurance company have been arrayed as opposite parties. The insured filed the written statement and admitted the claim preferred

by his workman. Moreover, there is no such finding of the Tribunal that there was collusion between the claimant and the person liable to make payment. The Insurance Company has not even applied for permission under the provisions of Section 110-C(2-A) of the Old Act of 1939, so that the insurance company could have availed the right to take all defences available to the insured. Moreover, it is for the claimant to have established her claim by producing the witnesses of fact, which had been done in the present case. It is true that owner of the vehicle Prem Singh did not appear in the witness box, but on this ground alone it cannot be held that there was collusion between the claimant and the insured. The insurer cannot be allowed such a lame stand in appeal.

Lastly, the quantum of compensation has been questioned by the Insurance Company. The ground to challenge the quantum is not available to the insurance company in view of the law laid down by the Apex Court in the case of ***"National Insurance Co.Ltd. V. Nicolletta Rohtagi [(2002) 7 SCC, Page 456].***

In the result, there is no merit in the appeal preferred by the Insurance Company, which is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. Costs easy.

The amount in deposit with Court, if any, be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

(B.S.Verma, J.)

R.C.P.